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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

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THE PEOPLE,

Plaintiff and Respondent,

v.

EDDIE EINAR OLSEN,

Defendant and Appellant.

C086924

(Super. Ct. Nos. 17CF00387,  
NCRP17CRF0146,  
NCRP17CRF0162)

Defendant Eddie Einar Olsen pleaded guilty to burglary and vandalism, and the trial court found true the allegation that he had previously been convicted of a strike. On appeal, defendant contends the court erred in denying his *Romero*<sup>1</sup> motion. He argues he is outside the scheme of the three strikes law for multiple reasons. Disagreeing, we affirm.

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<sup>1</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

## FACTUAL AND PROCEDURAL BACKGROUND

In January 2017 sheriff's deputies responded to a reported commercial burglary at a liquor store in Butte County.<sup>2</sup> A surveillance video showed defendant pull up to the propane locker at the store, pry the door open, and steal 21 tanks of propane worth approximately \$1,028. The deputies arrested defendant, and in February he was released on his own recognizance pending trial.

In May the trial court in El Dorado County sentenced defendant to seven years in prison for four felonies committed while released pending the charges in Butte County: failing to register as a sex offender (Pen. Code, § 290.013, subd. (a)),<sup>3</sup> two counts of commercial burglary (§ 459), and vandalism causing over \$400 in damage (§ 594, subd. (a).) Defendant admitted that he committed the offenses while he was released on his own recognizance. (§ 12022.1.) In June defendant failed to appear in Butte County Superior Court for a trial setting conference, and the court there issued a bench warrant for his arrest.

In December defendant was returned to Butte County Jail. In February 2018 defendant pleaded no contest to second degree burglary (§ 459) and vandalism (§ 594, subd. (a)) in connection with the January 2017 charges. The trial court found defendant was previously convicted of a strike offense, a 1981 conviction for committing a lewd or lascivious act on a child under the age of 14. (§ 288, subd. (a).)

Prior to sentencing, defendant filed a *Romero* motion requesting the trial court strike his strike prior. He argued such relief was appropriate because the nature of the current charges was nonviolent and did not involve a large amount of money, the strike conviction was very remote in time, his criminal record is generally nonviolent, and

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<sup>2</sup> The facts are taken from the probation report. At the change of plea hearing, the parties stipulated the factual basis for defendant's plea could be found in that report.

<sup>3</sup> Further undesignated statutory references are to the Penal Code.

given that he was 56 years old at the time of the current offense, the sentence imposed without the strike would be lengthy and justified. During oral argument, defense counsel added the strike offense was not a violent crime, and defendant's criminal activity appeared to be theft related to fuel his drug addiction.

The People opposed defendant's *Romero* motion, pointing to defendant's "continuous life of crime." His record included 18 criminal convictions, four of which were felonies committed while he was released from jail pending charges on the current case. Two of those four felonies were violations of the same statutory provisions he was alleged to have violated in the current case, burglary and vandalism. Although defendant did not have a history of violence, his crimes showed a pattern of victimizing property owners.

At sentencing, the trial court denied defendant's *Romero* motion and reasoned as follows:

"The Three Strikes rules are fairly specific. In this case, the defendant committed 10 felonies and 13 misdemeanors since the strike offense. He was [released on his own recognizance] at the time of this case and was convicted while [released on his own recognizance] of four felonies in El Dorado County, including a [felony committed while released on his own recognizance], finding that he was on bail or [released on his own recognizance] at that time. The El Dorado County [*sic*] did not, in fact, charge a strike in the matter. The Court cannot speculate as to why that might be.

"The defendant has continued to commit crimes, misdemeanors and felonies, throughout his life. He's a registered sex offender. He's been convicted on two separate occasions for violation of the [sex offender] provisions, [pertaining to] his registration.

"He does not fall outside of the Three Strikes scheme, outside of the spirit. The *Romero* motion will be denied. . . .

[¶] . . . [¶]

“This is a close case, . . . and I’ve written it up both ways. And when I write it up without the strike, the thing that is impressive, at least, is that these are behaviors of a drug addict. These are theft cases rather than violent cases. They’re not first-degree burglaries, they’re second-degree burglaries of commercial dwellings, commercial businesses. . . .

[¶] . . . [¶]

“As I indicated, it’s a close case.

“The Court is swayed by the El Dorado County conviction. While awaiting trial on this matter and knowing that he’s awaiting trial, knowing what the charges are, and knowing that he was guilty, he knew what he had done, he committed four additional felonies, including failing to register [as a sex offender] on the case that gives rise to the strike.

[¶] . . . [¶]

“[I] have read the *Romero* decision carefully, it’s not the first time I’ve read it, or *Williams* [*People v. Williams* (1998) 17 Cal.4th 148]. The Court finds it does have broad but not unfettered discretion to dismiss the strike under those cases.

“Three Strikes sentencing scheme is intended to restrict the Court’s discretion in sentencing repeat offenders. The striking of a strike prior is an extraordinary exercise of discretion. In choosing to strike a strike, the Court must determine whether in light of the nature and circumstances of the defendant’s present felonies and the prior serious and/or violent convictions and the particulars of his background, character, and prospects, the defendant may be deemed to be outside the spirit of the Three Strikes Law in whole or in part. And here I do find that the defendant fits squarely within those, within the Three Strikes Law.

“As I read to you, he’s committed 10 felonies and 13 misdemeanors, and been committed to prison on a number of occasions. He’s committed crimes while [released

on his own recognizance], and he just continues to commit crimes, misdemeanors and felonies, throughout his life. He fails to register as a sex offender.

“Court is denying the [*Romero*] motion.”

The trial court sentenced defendant to two years in prison for the burglary conviction, doubled to four years due to defendant’s prior strike. The court resentenced defendant on the El Dorado County convictions to four consecutive eight-month terms for those crimes, and two years for committing a felony while he was released before trial. The court also sentenced defendant to one year in prison for the vandalism conviction and stayed imposition of the sentence pursuant to section 654.

### **DISCUSSION**

Defendant contends the trial court abused its discretion in denying his *Romero* motion to strike his prior strike. He argues the court should have dismissed his prior strike because it was remote in time, the current offenses involved no violence and occurred approximately 11 years after his most recent felony conviction, his criminal history between his strike offense and the current offenses was nonviolent, and he acknowledged he needed a substance abuse program. Defendant claims the court put too much weight on his nonviolent criminal history and did not adequately consider his age and circumstances. We disagree.

Section 1385 gives the trial court authority, on its own motion or upon application of the prosecution “and in furtherance of justice,” to order an action dismissed. (*Id.*, subd. (a).) In *Romero*, our Supreme Court held a trial court may utilize section 1385 to strike or dismiss a prior strike for purposes of sentencing under the three strikes law. (*Romero, supra*, 13 Cal.4th at p. 504.) The ruling denying a request to dismiss a prior strike allegation “is subject to review under the deferential abuse of discretion standard.” (*People v. Carmony* (2004) 33 Cal.4th 367, 374 (*Carmony*)). “In reviewing for abuse of discretion, we are guided by two fundamental precepts. First, ‘ “[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or

arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.” ’

[Citation.] Second, a ‘ “decision will not be reversed merely because reasonable people might disagree. ‘An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.’ ” ’ [Citation.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*Id.* at pp. 376-377.)

“ ‘[T]he Three Strikes initiative, as well as the legislative act embodying its terms, was intended to restrict courts’ discretion in sentencing repeat offenders.’ [Citation.] To achieve this end, ‘the Three Strikes law does not offer a discretionary sentencing choice, as do other sentencing laws, but establishes a sentencing requirement to be applied in every case where the defendant has at least one qualifying strike, unless the sentencing court “conclud[es] that an exception to the scheme should be made because, for articulable reasons which can withstand scrutiny for abuse, this defendant should be treated as though he actually fell outside the Three Strikes scheme.” ’ [Citation.]” (*Carmony, supra*, 33 Cal.4th at p. 377.)

“Consistent with the language of and the legislative intent behind the three strikes law, we have established stringent standards that sentencing courts must follow in order to find such an exception. ‘[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law, on its own motion, “in furtherance of justice” pursuant to Penal Code section 1385(a), or in reviewing such a ruling, the court in question must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, in whole or in part, and hence

should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.’ [Citation.]” (*Carmony, supra*, 33 Cal.4th at p. 377.)

“[T]he law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper.” (*Carmony, supra*, 33 Cal.4th at p. 378.) It is not enough to show reasonable people might disagree about whether to strike a prior conviction allegation, and a reviewing court shall affirm the trial court’s ruling where the record demonstrates the court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law. (*Ibid.*) “Because the circumstances must be ‘extraordinary . . . by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack’ [citation], the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary.” (*Ibid.*)

Our review of these considerations shows the trial court did not abuse its discretion in denying defendant’s *Romero* motion. In ruling on defendant’s motion, the court recited the applicable standard on the record and acknowledged this was a “close case.” The court was ultimately swayed by defendant’s numerous felony and misdemeanor convictions, including four felonies committed while released awaiting trial in this case. Indeed, defendant appears to be “ ‘an exemplar of the “revolving door” career criminal to whom the Three Strikes law is addressed.’ ” (*Carmony, supra*, 33 Cal.4th at p. 379.) The court’s decision was well-reasoned and certainly not “so irrational or arbitrary that no reasonable person could agree with it.” (*Id.* at p. 377.)

## DISPOSITION

The judgment is affirmed.

/s/  
Duarte, J.

We concur:

/s/  
Butz, Acting P. J.

/s/  
Renner, J.